Contact: Hugh Corbett
Director of Litigation
Phone: 416-943-4685
Email: hcorbett@mfda.ca

**CASE SUMMARY #201003**
June 23, 2011

# MFDA Case Summary

## Enforcement

This case summary was prepared by Staff of the MFDA.

---

## Hearing Panel Approves Settlement With Luigi Francesco Ciardullo

**Nature of Proceeding**

A Hearing Panel of the Central Regional Council of the Mutual Fund Dealers Association of Canada ("MFDA") has approved a Settlement Agreement between the MFDA and Luigi Francesco Ciardullo ("Ciardullo") an Approved Person of the MFDA.

**By-Laws, Rules, Policies Violated**

The Hearing Panel considered the Settlement Agreement at a hearing held on November 26, 2010 in Toronto, Ontario. In the Settlement Agreement, Ciardullo admitted that:

(a) between December 2005 and March 15, 2008, Ciardullo failed to observe high standards of ethics and conduct in the transaction of business by:

(i) accepting $150,000 from an individual, PL, to invest on PL's behalf and then providing monies to another individual, SA, for investment on her behalf, without PL's knowledge and approval; and
(ii) failing to return PL's monies to her in accordance with the terms of the Promissory Note, contrary to MFDA Rule 2.1.1;

(b) between February 2006 and March 15, 2008, Ciardullo engaged in personal financial dealings with a client, PL which gave rise to an actual or potential conflict of interest between Ciardullo and client PL, which Ciardullo failed to address by the exercise of responsible business judgment influenced only by the best interests of client PL, contrary to MFDA Rule 2.1.4; and

(c) between December 2005 and March 15, 2008, Ciardullo engaged in securities related business that was not carried on for the account of the Member and through the facilities of the Member by selling, referring or facilitating the investment of $150,000 by PL in an investment owned, managed or arranged by SA or persons unknown, contrary to MFDA Rule 1.1.1(a).

MFDA Rule 1.1.1(a) states that:

**Members**. No Member or Approved Person (as defined in MFDA By-law 1.1) in respect of a Member shall, directly or indirectly, engage in any securities related business (as defined in MFDA By-law 1.1) except in accordance with the following:
(a) all such securities related business is carried on for the account of the Member, through the facilities of the Member (except as expressly provided in the Rules) and in accordance with the By-laws and Rules, other than:

(i) such business as relates solely to trading in deposit instruments conducted by any Approved Person not on account of the Member; and
(ii) such business conducted by an Approved Person as an employee of a bank and in accordance with the *Bank Act (Canada)* and the regulations thereunder and applicable securities legislation.

MFDA Rule 2.1.1 states that:

**Standard of Conduct**. Each Member and each Approved Person of a Member shall:
(a) deal fairly, honestly and in good faith with its clients;

(b) observe high standards of ethics and conduct in the transaction of business;

(c) not engage in any business conduct or practice which is unbecoming or detrimental to the public interest; and

(d) be of such character and business repute and have such experience and training as is consistent with the standards described in this Rule 2.1.1, or as may be prescribed by the Corporation.

MFDA Rule 2.1.4 states that:

**Conflicts of Interest**

(a) Each Member and Approved Person shall be aware of the possibility of conflicts of interest arising between the interests of the Member or Approved Person and the interests of the client. Where an Approved Person becomes aware of any conflict or potential conflict of interest, the Approved Person shall immediately disclose such conflict or potential conflict of interest to the Member.

(b) In the event that such a conflict or potential conflict of interest arises, the Member and the Approved Person shall ensure that it is addressed by the exercise of responsible business judgment influenced only by the best interests of the client and in compliance with Rules 2.1.4(c) and (d).

(c) Any conflict or potential conflict of interest that arises as referred to in Rule 2.1.4(a) shall be immediately disclosed in writing to the client by the Member, or by the Approved Person as the Member directs, prior to the Member or Approved Person proceeding with the proposed transaction giving rise to the conflict or potential conflict of interest.

(d) Each Member shall develop and maintain written policies and procedures to ensure compliance with Rules 2.1.4(a), (b) and (c).

**Penalty**

Under the terms of settlement, Ciardullo agreed to the following penalties:

1. Ciardullo shall pay a fine in the amount of $10,000, pursuant to section 24.1.1(b) of MFDA By-law No. 1;

2. Ciardullo shall be prohibited from conducting securities related business while in the employ of or associated with a Member of the MFDA for a period of 3 months from the date of the Order, pursuant to s. 24.1.1(e) of MFDA By-law No. 1; and

3. Ciardullo shall pay costs in the amount of $2,500, attributable to the investigation and settlement of this matter, pursuant to section 24.2 of MFDA Bylaw No. 1.

**Summary of Facts**

Ciardullo has been registered in Ontario as a mutual fund salesperson with Addington Financial Corporation ("Addington") since February 12, 2003.

Ciardullo was licensed to sell insurance, and did so under the business name "Pinnacle Financial Services".

PL is an individual who, in December 2005, was not a client of Addington, but became a client in February 2006. SA is PL's brother and a long-time friend of Ciardullo. SA was not a client of Addington, and was not registered in the securities industry in any capacity.

In or about December 2005, SA told Ciardullo that PL had a significant amount of money to be invested but PL was not comfortable with SA handling the investment on her behalf. At SA's request, Ciardullo agreed to meet with PL and led her to believe that he would invest PL's money on her behalf. Unbeknownst to PL, Ciardullo and SA had agreed that once Ciardullo obtained PL's money from her, he would provide it to SA, who would then purportedly invest the money on PL's behalf without her knowledge.

Ciardullo agreed that he would not inform PL that SA would be taking possession of her monies.

PL provided Ciardullo with a cheque for $150,000 and he provided PL with a Promissory Note in which Ciardullo acknowledged his personal indebtedness to PL and agreed to repay her $150,000 plus no less than 10% interest within 12 months. Ciardullo deposited the money Pinnacle Financial Services' bank account (the "Pinnacle Account"), which he operated.

Ciardullo did not disclose to Addington any of the foregoing circumstances.

On or about February 13, 2006, approximately two months after Ciardullo provided the Promissory Note to PL, PL became a client of Addington. Ciardullo was the mutual fund salesperson responsible for her account. At the time PL became a client of Addington, Ciardullo did not disclose to Addington his pre-existing financial arrangements with PL.

Between approximately January 2006 and July 2006, SA requested that Ciardullo provide him with monies purportedly to invest on PL's behalf, which Ciardullo claims he did by way of various cash payments to SA totaling approximately $50,000. Ciardullo claims that he made the cash payments from sources other than the monies on deposit in the Pinnacle Account. During this period, Ciardullo kept the entire amount of the $150,000 provided to him by PL on deposit in the Pinnacle Account. Ciardullo claims that SA invested the $50,000 provided to him by Ciardullo on PL's behalf by giving the money to another individual, the identity of whom Ciardullo claims he does not know, to invest in "futures". This investment was not known to or approved for sale by Addington.

PL eventually requested the return of $100,000, which Ciardullo provided. Thereafter, Ciardullo made four payments totaling $40,000 from the Pinnacle Account to PL on account of the balance owing pursuant to the Promissory Note. Ciardullo made each of these four payments only after he had first received a corresponding repayment from SA in respect of the monies Ciardullo had advanced to him.

By May 26, 2007, approximately six months after the due date for payment under the terms of the Promissory Note had expired, Ciardullo had paid PL a total of $140,000 on account of the amount owing to her under the Promissory Note. PL was still entitled to be paid $10,000 in principal and a minimum of $15,000 in interest. Although Ciardullo had sufficient funds in the Pinnacle Account at all material times to repay PL the remaining amounts owing to her under the Promissory Note, he chose not do so for so long as there were still outstanding amounts owing to him from SA. Ciardullo claimed that he was concerned that he would not receive repayment from SA after he had repaid the amounts owing to PL.

In January 2008, PL complained to the MFDA about Ciardullo's conduct. On or about February 1 2008, Ciardullo paid PL a further $10,000 on account of the amount owing to her under the Promissory Note, which represented the remainder of PL's $150,000 principal.

On or about March 15, 2008, approximately 15 months after the due date for payment under the terms of the Promissory Note had expired, Ciardullo made a final payment of $15,000 to PL, which represented the interest portion owing to her under the Promissory Note.

For greater detail, see the Settlement Agreement, accepted on November 26, 2010 and the Decision and Reasons, dated February 17, 2011 posted on the MFDA's website in the "Enforcement" section under "Completed Cases".

DM # 250471